

## 231.205-22

(ii) See 225.7303-2(c) for allowability provisions affecting foreign military sale contracts.

(iii) For major contractors, the following limitations apply:

(A) The amount of IR&D/B&P costs allowable under DoD contracts shall not exceed the lesser of—

(1) Such contracts' allocable share of total incurred IR&D/B&O costs; or

(2) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(B) Allowable IR&D/B&P costs are limited to those for projects that are of potential interest to DoD, including activities intended to accomplish any of the following:

(1) Enable superior performance of future U.S. weapon systems and components.

(2) Reduce acquisition costs and life-cycle costs of military systems.

(3) Strengthen the defense industrial and technology base of the United States.

(4) Enhance the industrial competitiveness of the United States.

(5) Promote the development of technologies identified as critical under 10 U.S.C. 2522.

(6) Increase the development and promotion of efficient and effective applications of dual-use technologies.

(7) Provide efficient and effective technologies for achieving such environmental benefits as: Improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(iv) For major contractors, the cognizant administrative contracting officer (ACO) or corporate ACO shall—

(A) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(B) Provide the results of the determination to the contractor.

(v) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the po-

## 48 CFR Ch. 2 (10-1-06 Edition)

tential interest to DoD determination (also see 242.771-3).

[64 FR 8729, Feb. 23, 1999]

### 231.205-22 Legislative lobbying costs.

(a) Costs associated with preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed also are unallowable (10 U.S.C. 2249).

[69 FR 63332, Nov. 1, 2004]

### 231.205-70 External restructuring costs.

(a) *Scope.* This subsection—

(1) Prescribes policies and procedures for allowing contractor external restructuring costs when savings would result for DoD; and

(2) Implements 10 U.S.C. 2325.

(b) *Definitions.* As used in this subsection:

(1) *Business combination* means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) *External restructuring activities* means restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.

(3) *Restructuring activities* means non-routine, nonrecurring, or extraordinary activities to combine facilities, operations, or workforce, in order to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities do not

include routine or ongoing repositionings and redeployments of a contractor's productive facilities or workforce (e.g., normal plant rearrangement or employee relocation), nor do they include other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).

(4) *Restructuring costs* means the costs, including both direct and indirect, of restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than \$2.5 million, the costs shall not be subject to the audit, review, and determination requirements of paragraph (c)(4) of this subsection; instead, the normal rules for determining cost allowability in accordance with FAR part 31 shall apply.

(5) *Restructuring savings* means cost reductions, including both direct and indirect cost reductions, that result from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.* Restructuring costs associated with external restructuring activities shall not be allowed unless—

(1) Such costs are allowable in accordance with FAR part 31 and DFARS part 231;

(2) An audit of projected restructuring costs and restructuring savings is performed;

(3) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, and negotiates an advance agreement in accordance with paragraph (d) of this subsection; and

(4)(i) The official designated in paragraph (c)(4)(ii) of this subsection determines in writing that the audited pro-

jected savings, on a present value basis, for DoD resulting from the restructuring will exceed either—

(A) The costs allowed by a factor of at least two to one; or

(B) The costs allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(ii)(A) If the amount of restructuring costs is expected to exceed \$25 million over a 5-year period, the designated official is the Under Secretary of Defense (Acquisition, Technology, and Logistics) or the Principal Deputy. This authority may not be delegated below the level of an Assistant Secretary of Defense.

(B) For all other cases, the designated official is the Director of the Defense Contract Management Agency. The Director may not delegate this authority.

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall follow the procedures at PGI 231.205-70(d).

(e) *Information needed to obtain a determination.* (1) The novation agreement (if one is required).

(2) The contractor's restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The cognizant ACO's recommendation for a determination. This recommendation must clearly indicate one of the following, consistent with paragraph (c)(4)(i) of this subsection:

(i) The audited projected savings for DoD will exceed the costs allowed by a factor of at least two to one on a present value basis.

(ii) The business combination will result in the preservation of a critical capability that might otherwise be lost to DoD, and the audited projected savings for DoD will exceed the costs allowed on a present value basis.

(f) *Contracting officer responsibilities.* (1) The contracting officer, in consultation with the cognizant ACO, should consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between—

## 231.303

(i) The time a business combination is announced; and

(ii) The time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

(2) The decision to use a repricing clause will depend upon the particular circumstances involved, including—

(i) When the restructuring will take place;

(ii) When restructuring savings will begin to be realized;

(iii) The contract performance period;

(iv) Whether the contracting parties are able to make a reasonable estimate of the impact of restructuring on the contract; and

(v) The size of the potential dollar impact of restructuring on the contract.

(3) If the contracting officer decides to use a repricing clause, the clause must provide for a downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring net savings.

[63 FR 7309, Feb. 13, 1998; 63 FR 12862, Mar. 16, 1998, as amended at 64 FR 18828, Apr. 16, 1999; 65 FR 39705, June 27, 2000; 68 FR 7440, Feb. 14, 2003; 69 FR 63332, Nov. 1, 2004; 70 FR 43075, July 26, 2005]

### Subpart 231.3—Contracts With Educational Institutions

#### 231.303 Requirements.

(1) Pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160), no limitation may be placed on the reimbursement of otherwise allowable indirect costs incurred by an institution of higher education under a DoD contract awarded on or after November 30, 1993, unless that same limitation is applied uniformly to all other organizations performing similar work under DoD contracts. The 26 percent limitation imposed on administrative indirect costs by OMB Circular No. A-21 shall not be applied to DoD contracts awarded on or after November 30, 1993, to institutions of higher education because the same limitation is not applied to other organizations performing similar work.

(2) The cognizant administrative contracting officer may waive the prohibi-

## 48 CFR Ch. 2 (10-1-06 Edition)

tion in 231.303(1) if the governing body of the institution of higher education requests the waiver to simplify the institution's overall management of DoD cost reimbursements under DoD contracts.

(3) Under 10 U.S.C. 2249, the costs cited in 231.205-22(a) are unallowable.

[59 FR 26144, May 19, 1994, as amended at 60 FR 2331, Jan. 9, 1995; 61 FR 36306, July 10, 1996; 62 FR 47155, Sept. 8, 1997; 63 FR 14641, Mar. 26, 1998]

### Subpart 231.6—Contracts With State, Local, and Federally Recognized Indian Tribal Governments

#### 231.603 Requirements.

Under 10 U.S.C. 2249, the costs cited in 231.205-22(a) are unallowable.

[61 FR 36306, July 10, 1996, as amended at 62 FR 47155, Sept. 8, 1997; 63 FR 14641, Mar. 26, 1998]

### Subpart 231.7—Contracts With Nonprofit Organizations

#### 231.703 Requirements.

Under 10 U.S.C. 2249, the costs cited in 231.205-22(a) are unallowable.

[61 FR 36306, July 10, 1996, as amended at 62 FR 47155, Sept. 8, 1997; 63 FR 14641, Mar. 26, 1998]

## PART 232—CONTRACT FINANCING

### Sec.

232.001 Definitions.

232.006 Reduction or suspension of contract payments upon finding of fraud.

232.006-5 Reporting.

232.007 Contract financing payments.

232.070 Responsibilities.

232.071 [Reserved]

232.072 Financial responsibility of contractors.

232.072-1 Required financial reviews.

232.072-2 Appropriate information.

232.072-3 Cash flow forecasts.

### Subpart 232.1—Non-Commercial Item Purchase Financing

232.102 Description of contract financing methods.

232.102-70 Provisional delivery payments.

232.111 Contract clauses for non-commercial purchases.